

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-57-2010 (O&M)

Date of decision: 18.01.2023

M/s. Punjab Wool Syndicate

....Appellant

V/s.

The State of Punjab and another

.....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Sandeep Goyal, Advocate,
Ms. Nazuk Singhal, Advocate
and Ms. Aakriti, Advocate for
the appellant.

Mr. Alankar Narula, A.A.G., Punjab.

Ritu Bahri, J.

The appellant-M/s. Punjab Wool Syndicate has come up in appeal against the order dated 05.03.2010 (Annexure A-10) passed by the Tribunal dismissing the Appeal (Vat) No. 565 of 2009 of the appellant and had upheld the penalty of Rs.69,952/- under Section 51(7)(c) of the Punjab VAT Act, 2005.

As per the facts culled out from the order dated 24.07.2006 (Annexure A-7) passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre (Export), Shambhu at Mehmampur, the goods were being transferred in Vehicle No. HR-38-9923 from Ludhiana to Delhi. The driver of the vehicle furnished following documents at the computer counter for the generation of declaration in form VAT-XXXVI:-

1. Invoice No. 648 dated 12.7.06 of M/S Krishna Paints & Chemicals, Jalandhar for Rs.67,754/- in favour of M/s Shri

Balaji Trading Co. Ghar Shadi Ram Bal Mukand More Ganj, Saharanpur (U.P.).

2. Invoice No. 225 dated 12.7.06 of M/S Super Polyme & Co. Coating Jalandhar for Rs.13,104/- in favour of M/S Shri Balaji Trading Company, Ghar Shadi Ram Bal Mukand, More Gang, Saharanpur.
3. GR No. 431 dated 12.7.06 of M/s. H.S.Aujla Transport Service from Jalandhar to Saharanpur.
4. Invoice No. 8 dated 12.7.06 of M/S R.S. Machi Mart, Ludhiana for Rs.30,800/- in favour of Nav Nidh Machine Tolls, Delhi.
5. GR No. 2197 dated 12.7.06 of M/S Tempo Transport Union, Ludhiana from Ludhiana to New Delhi.

After getting the declaration in form VAT-XXXVI, the driver of the vehicle produced the above documents before the detaining officer, who after examining the same, found that the goods seemed to be excessive and needed physical verification. The goods were physically verified and found that the driver of the vehicle did not furnish the information in respect of Invoices No. 526 and 527 both dated 12.7.2006 and GR Nos. 9411 and 9412. Therefore, the goods were detained under Section 51(6) of the Punjab VAT Act, 2005 and a show cause notice was issued to the owner of the goods i.e. M/S Punjab Wool Syndicate, Ludhiana for 15.7.2006.

After issuing notice, Sunil Nanda, Accounts Manager of the consignor party appeared before the detaining officer on 15.7.2006 and he did not furnish information with respect to invoices No. 526 and 527 dated 12.07.2006. He furnished bank guarantee for Rs.50,000/- and Rs.20,000/- (Total Rs.70,000/-) and the goods were released by the detaining officer. Thereafter, show cause notice under Section 51(7)(c) of the Punjab VAT Act, 2005 was issued to the owner of the goods i.e. M/s. Punjab Wool Syndicate, Ludhiana for 21.07.2006. He was confronted with the report of

the detaining officer that the driver of the vehicle had failed to furnish information with respect to goods covered by Invoices No. 526 and 527 at the I.C.C. The dealer failed to produce his books of account before the detaining officer and also failed to give any explanation for not submitting the information in respect of above said two invoices. The value of the goods was Rs.1,39,904.10 and they were meant for trade. Since the dealer had not furnished information at the I.C.C. and the intention was to avoid/evade tax due to the State, a penalty of Rs.69,952/- was imposed. On appeal, the said order was affirmed by the Deputy Excise & Taxation Commissioner (A), Patiala Division, Patiala vide order dated 15.06.2009 (Annexure A-8). Vide order dated 05.03.2010 (Annexure A-10), the Value Added Tax Tribunal, Punjab, Chandigarh had dismissed the appeal filed by the appellant against the order dated 15.06.2009.

Learned counsel for the appellant has referred to the supply order (Annexure A-1) given by the Additional Deputy Inspector General of Police, CRPF, Jalandhar wherein nomenclature of the goods was specified as Beret Wool Knitted with Nylon Tape Binding (Khakhi) (at page No. 15 of the paper-book) and the total amount was Rs.38,42,564/- of the said goods. As per the supply order, two of the destinations were the Additional DGIGP, GC, CRPF, Mokambehghat-803303 (Bihar) and the Additional DIGP, GC, CRPF, Rangareddy-500078 (Andhra Pradesh). He has also placed on necessary bills bearing Invoices No. 526 and 527 dated 12.07.2006 (Annexures A-2 and A-3) respectively in favour of the Additional DIG, CRPF. The materials were booked in the Transport Company as these were in small quantities. G.Rs (Annexures A-4 and A-5) were issued by Satkar Tempo Transport Union dated 12.07.2006 upto Delhi

Railway Station. From Delhi, the goods were to be sent by Train to the actual consignees. This fact was mentioned in the G.Rs and it was a Government supply. The inspection notes are Annexure A-6. After loading the goods, the driver of the vehicle reached at I.C.C. Shambhu where he furnished all the documents for generation of Form VAT-XXXVI.

Learned counsel for the appellant has further argued that the person operating the computer failed to generate two bills of the appellant due to oversight. The driver of the vehicle furnished all the documents alongwith the computer generated information before the officer- incharge who detained the goods on the ground that no information was generated in respect of goods. He has further argued that keeping in view the supply order (Annexure A-1) and inspection notes (Annexure A-6), the sale was being made by the appellant to Central Government Department and the Central Government Department had received sanction from the financial authority to purchase these things. It was not a case where name of the purchaser had not been disclosed and all the invoices had been produced alongwith G.Rs. To support his contention, he has referred to the following judgments on the proposition that all the necessary documents were in possession of the driver before the I.C.C. and there was no intention to evade tax:-

1. Jain Industrial Company, Motia Khan, GT Road, Mandi Gobindgarh v. State of Punjab (2008) 31 PHT 398 (PVT)
2. Lakhanpal Fabricators (Unit I), Near O.P. Bansal High School, Harbanspura, Mandi Gobindgarh vs. State of Punjab (2009) 34 PHT 106 (PVT)
3. Krish Pack Industries Vs. State of Punjab and others (2006) 28 PHT 27 (P&H)
4. M/s. Ganpati Foods vs. The State of Punjab and another

(2014) 67 VST 348

5. State of Punjab and another vs. Shree Ram Panels (2011)
46 VST 424 (P&H)

6. M/s. Balaji Trading Company, Rewari vs. The State of
Haryana and another 2016 SCC Online P&H 4741

Since the sale was being made to the Government Department, the invoices and G.Rs could not have been doubted keeping in view inspection notes (Annexure A-6) which was with the driver and no attempt was made to evade tax due to the State. Had the driver not produced the invoices for generation of declaration in Form VAT-XXXVI, it could have been a reason to initiate penalty proceedings. Since, all the documents including Invoices No. 648 dated 12.7.06, 225 dated 12.7.06, 8 dated 12.7.06 and GRs No. 431 dated 12.7.06 and 2197 dated 12.7.06 were produced alongwith Invoices No. 526 and 527 dated 12.7.2006 and GR Nos. 9411 and 9142 were produced by the driver at I.C.C., the findings recorded by the Assistant Excise and Taxation Commissioner, ICC (Export) Shambhu that the driver did not give any information with respect to invoices No. 526 and 527 and subsequently imposing penalty is liable to be set aside as the driver is not expected to know or give details of these invoices.

Learned counsel for the respondent-State has argued that in fact Form VAT-XXXVI had not been issued to the appellant company for non-producing invoices No. 526 and 527 before the I.C.C. but the goods were detained as they seemed to be in excess of the invoices produced before the I.C.C. He has finally argued that the driver had generated 3 bills whereas information of two bills were not generated and the Tribunal had rightly dismissed the appeal of the appellant by referring to judgment in the case of

M/s. Jain Industries Company vs. State of Punjab 2008(31) PHT page No. 398.

Heard learned counsel for the parties and perused the case file.

At the outset, reference can be made to ***M/s. Jain Industries's case (supra)***. This judgment was passed by the Value Added Tax Tribunal, Punjab, Chandigarh. In that case, the goods had been transferred from Mandi Gobindgarh to Raipur in Chattisgarh and the driver of the vehicle furnished information with respect to four bills and GRs and generated Form No. XXXVI in respect of those bills and when the goods were detained, invoice No. 26 dated 26.06.2006 of Jain Industrial Company, Mandi Gobindgarh in favour of Bajrang Metallic and Power Ltd., Raipur (Chattisgarh) and GR No. 6337 dated 26.06.2006 of M/s. Ashok Akal Transport Company (Registered) from Mandi Gobindgarh to Raipur (Chattisgarh) were found. The driver had not given information with respect to these documents at the I.C.C. and no Form No. XXXVI was generated with a view to evade tax. He further gave a statement that owner had asked him that no such forms may be generated at the I.C.C. Hence, the facts of that case show that apart from four bills, there were two other bills of other private companies, which were not shown at the time of generation of Form No. XXXVI at I.C.C. and this would amount to attempt to evade tax.

However, in the facts of the present case, sale was processed to be made to CRPF as per supply order (Annexure A-1) and all the information were given at the computer centre and all the documents were shown but when the goods were detained, other two invoices were also shown. The supply order was also shown which was given by the

Additional Deputy Inspector General of Police, CRPF, Jalandhar. Hence, it was a sale which was made to Government Department and the appellant had also produced GRs and all the invoices at the time of checking. There was no attempt made by the driver not to show invoices before the detaining officer.

In *M/s. Ganpati Foods vs. The State of Punjab and another (2014) 67 VST 348*, a Coordinate Bench of this Court observed that in that case Dealer was registered under the provision of Haryana Value Added Tax, Act, 2003. It was having oil solvent plant at Nilokheri in District Karnal. The appellant sold rice bran oil to one M/s. Bathinda Chemicals Limited, Bathinda, a registered dealer under the Punjab VAT Act vide bill dated 28.01.2008 booked with Ahmedgarh Transport Co., Ludhiana for its transportation from Nilokheri to Bathinda. On its way from Nilokheri to Bathinda, the driver of the vehicle had to cross the I.C.C. (Import) Shambhu set up by the Punjab Government under Section 51 of the Punjab VAT Act. The driver of the vehicle entered the I.C.C. and after getting necessary entry made by the E.T.O. and clearance from the police personnel, a stamp was affixed on his documents to this effect. When the documents were returned to the driver, he was under the impression that necessary entry had been made. On its way to Bathinda, it was checked by the Excise and Taxation Officer (Mobile Wing), Bathinda and a case was made out for violation of Section 51(6)(b) of the Punjab VAT Act on the ground that the information had not been generated at the I.C.C. section centre while entering Punjab State. The goods were detained and were subsequently released after furnishing bank guarantee on 01.02.2008 and, thereafter, penalty amounting to Rs.7,18,913/- was imposed by the Assistant Excise and Taxation

Commissioner (AETC) vide order dated 06.02.2008. Against the order dated 06.02.2008, appeal was filed by the assessee before the first appellate authority which was dismissed vide order dated 29.09.2008 and the second appeal was dismissed by the Tribunal on 16.04.2009. The VAT appeal was allowed by the Coordinate Bench and the penalty was set aside on the ground that the goods in question were duly accompanied by invoice/GR, statutory form VAT and the insurance policy with stamp of I.C.C. at Shambhu on the GR. However, the driver being ignored and illiterate, could not generate declaration at the I.C.C. and this in itself would not amount an attempt to evade tax as the documents were sufficient to draw a conclusion that there was no attempt to evade tax **unless the documents were rejected on the ground that they were not genuine.**

Reference can now be made to judgment passed in *State of Punjab and another vs. Shree Ram Panels (2011) 46 VST 424*, wherein a coordinate Bench of this Court had dismissed the appeal filed by the State of Punjab against the order of Tribunal as the Tribunal had accepted the appeal filed by the assessee and set aside the imposition of penalty on the ground that there was no violation of Section 51(4) of the Punjab Value Added Tax Act with a view to make an attempt to evade tax as the driver of the vehicle was in possession of goods receipts alongwith invoices and produced the same as well.

Further reference can be made to a recent judgment passed by the Division Bench of this Court in the case of *M/s. Balaji Trading Company, Rewari vs. The State of Haryana and another 2016 SCC Online P&H 4741*. In that case, the assessee Balaji Trading Company was dealing with the purchase orders from NAFED, a Government of India

Undertaking. Annexure A-3 was the invoice dated 28.01.2003 and challan to substantiate that the transaction was with the Government organization NAFED was held to be bonafide and genuine as the documents were required to be examined and only on the statement of the driver, penalty could not be imposed.

In the facts of the present case, the appellant was making sale to Government Department all over India as the supply order was given by the Additional Deputy Inspector General of Police, CRPF, Jalandhar and the driver had produced 5 documents before the computer centre at ICC but VAT-XXXVI could not generate and at the time of checking, apart from 5 documents two invoices No. 526 and 527 dated 12.7.2006 and GR Nos. 9411 and 9412 were also produced. Since the respondents, in the present case, were not disputing the fact that the sale was being made to CRPF and only on account of non-generation of VAT-XXXVI, penalty could not have been imposed. Further, in the order dated 05.03.2010 (Annexure A-10), it was further observed that with respect to Invoices No. 526 and 527, the driver did not furnish any information. The driver is not required to give any information with respect to details of the invoices. He is to only produce documents to show that there was a supply order and GRs had been issued and he was taking the goods to their destination outside the State. Further, it is not the case of the respondents that the two invoices No. 526 and 527 did not issue to CRPF. Hence, once the Government Department had accepted the invoices produced at I.C.C., there was no occasion not to accept Invoices No. 648, 225 and 8 dated 12.07.06. Similarly, invoices No. 526 and 527 were also issued on the same date i.e. 12.07.2006 with respect to supply order (Annexure A-1). The driver was not expected to know

details of the supply order. It is not the case of the respondents that on 13.07.2006, the appellant did not produce above said invoices. In one of the cases as referred above, even non-appearance before the I.C.C. cannot be made a ground to initiate penalty proceedings if no attempt to evade tax is made out. However, in the present case, the driver had produced the documents at I.C.C. and subsequently at the time of checking, he showed all the invoices. There was no attempt to evade tax. Hence, VAT appeal is allowed and no case for imposition of penalty is made out under Section 51(7)(c) of the Punjab VAT Act, 2005. Order dated 05.03.2010 (Annexure A-10) passed by the Tribunal is set aside.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

18.01.2023

Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No